IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13133 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHUPAT PITHABHAI KATARIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13133 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 20/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Rajkot City, on 21st of July, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is in detention as bootlegger from 21st of July, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at subjective satisfaction. Firstly, the fact of filing three criminal cases against the petitioner under the Bombay Prohibition Act and two in-camera statements of witnesses, whose identity is not disclosed, claiming privilege under Section 9(2) of the PASA Act.

3. Three offences under the Bombay Prohibition Act came to be registered against the petitioner, one at Malviyanagar Police Station, Rajkot, on 17th of March, 2003 and second at Pradhyumnagar Police Station, on 30th of August, 2003 and third at again Malviyanagar Police Station, Rajkot, on 24th of June, 2004. In all, these three offences, the petitioner was released on bail. It was alleged that in three cases, the petitioner was found in possession of some country liquor. The detaining authority considered exhaustively and thoroughly investigation papers in all these three cases registered against the petitioner. Secondly, the detaining authority also relied upon two in-camera statements as recorded by sponsoring authority on 18th of July, 2004 and verified by detaining authority on 19th of July, 2004. One witness referred to the incident occurred on 4th of July, 2004 while he was present at his place of business at 9.30 a.m., the petitioner along with his one accomplice approached the witness and demanded his scooter. Witness refused, and so refusing, the petitioner started giving abuses and administered slaps to the witness. The witness stated that the petitioner was unnecessarily harassing innocent tradesmen and, therefore, he would file complaint before the Police. The petitioner was got excited and with his accomplice, rushed to the place of his business and damaged the place and with the knife threatened the witness that if the witness filed complaint before the police, he would be done to death. On shouts of the witness, a crowd was gathered around, but nobody dared to rescue the witness. To strike terror among the crowd, the petitioner and his accomplice rushed towards the crowd with open knife and, therefore, the crowd was dispersed. The atmosphere of fear was spread. By act of supplication by the witness he was allowed to go. The second witness stated the

incident occurred on May 20, 2004 at about 7.00 p.m. while witness was present at his place of business, the petitioner and his one accomplice approached near the place of business of the witness on scooter and started selling country liquor. When witness said to the petitioner to stop his activity, the petitioner was got excited and started abusing the witness and stated that the petitioner was going to sell country liquor at that place alone. On so saying by the petitioner, the witness stated to the petitioner that he would call the police and get the petitioner arrested by the police. The petitioner thereupon started beating the witness. On shouts of the witness the crowd was gathered, but nobody dared to rescue the witness. To strike the terror among the crowd, the petitioner and his accomplice rushed towards the crowd with open knife and, therefore, the crowd was dispersed. The fear was spread in the area. By the act of supplication by the witness, he could save himself. From the above material, the detaining authority came to the conclusion that the petitioner was headstrong and was possessing ferocious tendency and, therefore, was bootlegger within the meaning of PASA Act. The detaining authority also came to the conclusion that the petitioner was engaged in storing, selling and transporting the country liquor and was harassing innocent citizens, who became obstacles in his illegal activities of selling country liquor. After considering the remedies available in general law, the detaining authority came to the conclusion that the steps under the general law against the petitioner would take time, while the activities of the petitioner was required to be prevented forthwith. The detaining authority, therefore, passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Mrs. Subhadra G Patel for the petitioner and learned AGP HM Prachchhak for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was material placed before the detaining authority to come to the conclusion that by the activity of the petitioner the public order was disturbed and public health was adversely affected.

6. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the

detaining authority must reach to subjective satisfaction through cogent material that the activities of the detenu directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health.

7. As above stated, the detaining authority to reach to this subjective satisfaction, relied upon two types of materials . In this exercise, a clear line has to be drawn between "breach of law and order" and "breach of public order". Now referring to the three cases filed against the petitioner under the Bombay Prohibition Act and the investigation papers as placed on record, it is clear that the cases against the detenu on the ground that he was dealing in liquor, have no bearing on the question of maintenance of public order. At the most, this may be a breach of law, for which, the petitioner may be tried and punished, but surely the act constituting the offences cannot be said to have affected the even tempo of the life of the community.

8. To reach to the subjective satisfaction about disturbance of public order, again, it would be necessary for the detaining authority to consider, fall out, reach and impact of the activities of the petitioner to judge whether potentiality of the activities was capable of disturbing public order. Two incidents narrated in in-camera statements, it appears that those were more individual dispute than to involve society at large or even disturbing the tempo of the life of the community. The potentiality of the act alleged in in-camera statements, from the bare reading, do not disclose capability to disturb the even tempo of the life of the community or society at large or section of the society. No widespread danger to society could be inferred from the statements of the witnesses and the above two statements, even after taking them on their face value, unable to convince that the activities disclosed by the statements were prejudicial to the maintenance of public order, may be the incident of breach of law and order.

9. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393, wherein the Division Bench of this Court after considering the decision of the Apex Court, observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad

City, AIR 1989 SC 491 and T. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

10. Having regard to the facts of the present case, it clearly appears that the facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by Commissioner of Police, Rajkot City, on 21st of July, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Bhupat Pithabhai Katariya is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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